

No. 16,213

United States Court of Appeals  
For the Ninth Circuit

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GUAM INVESTMENT COMPANY, INC.,  
et al.,

*Appellants,*

vs.

CENTRAL BUILDING, INC., et al.,

*Appellees.*

On Appeal from the District Court of Guam.

BRIEF OF APPELLEES

CENTRAL BUILDING, INC., ANTHONY C. LUJAN, ELIZABETH  
S. LUJAN, JOHN T. MARTINEZ, RAFAELA V.  
MARTINEZ AND MANUEL U. LUJAN.

JOHN A. BOHN,  
ARRIOLA, BOHN & GAYLE,  
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*Attorneys for Appellees*

*Central Building, Inc., Anthony  
C. Lujan, Elizabeth S. Lujan,  
John T. Martinez, Rafaela V.  
Martinez and Manuel U. Lujan.*

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## Subject Index

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	Page
Jurisdiction .....	1
Statement .....	1
Questions presented .....	2
Argument .....	3
I. Under the Federal Rules of Civil Procedure, the affirmative defense of res judicata may be raised by motion where all of the relevant facts are, as here, shown by the court's own records, of which it takes judicial notice .....	3
II. The issues raised in this action were finally settled and adjudicated in civil case 49-55 and judgment rendered therein is res judicata .....	4
Conclusion .....	5

## Table of Authorities Cited

---

Cases	Pages
346 Bloomfield Avenue Corp. v. Montclair Manufacturing Co., D.C. N.J. 1950, 90 F. Supp. 1020 .....	3
Dobbins v. Economic Gas Co. (1920) 182 Cal. 616 .....	4
Florasynth Laboratories, Inc. v. Goldberg, 191 F. 2d 877 (7th Cir. 1951) .....	3
Larter & Sons v. Dinkler Hotels Co., 191 F. 2d 877 (5th Cir. 1952) .....	4
W. E. Hedger Transp. Corp. v. Ira S. Bushey & Sons, 186 F. 2d 236 (2nd Cir. 1950) .....	3

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Special reference is made to companion brief of Appellees Guam Savings and Loan Association and Marianas Finance Co., Inc., filed in Action No. 16213.

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Codes	
28 U.S.C. 1291 .....	1
28 U.S.C. 1294 .....	1
48 U.S.C. 1424 .....	1
34 C.J.S. 743 .....	4
50 C.J.S. 57, 331 .....	4

Rules	
F.R.C.P. ....	3

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MARTINEZ AND MANUEL U. LUJAN.**

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**JURISDICTION.**

Jurisdiction of the District Court of Guam is based on U.S.C. Title 48, Sec. 1424, Jurisdiction of this appeal in this Court is based on U.S.C. Title 28, Secs. 1291, 1294.

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**STATEMENT.**

This is an appeal from a judgment of the District Court of Guam sustaining motion of Appellees Central Building, Inc. and its officers and stockholders,

Anthony C. Lujan, Elizabeth S. Lujan, John T. Martinez, Rafaela V. Martinez and Manuel U. Lujan, to dismiss Appellants' complaint on the grounds that said complaint does not state a cause of action against the Appellees and that all of the issues were previously determined by the District Court in Civil Case No. 49-55. (R. pp. 16-17.)

Appellees respectfully refer this Honorable Court to the statement of the case set forth in the brief of Appellees Guam Savings and Loan Association and Marianas Finance Co. Appellees concur with and adopt the statement therein contained.

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### QUESTIONS PRESENTED.

Appellants have directed their brief to all of the Appellees named in the present action. No distinction is made in any of the arguments as to their applicability to one rather than another Appellee and Appellees herein must conclude that all of the specifications of errors are raised against Appellees herein as well as Appellees Guam Savings and Loan Association and Marianas Finance Co.

Since Appellants are not appealing that portion of the District Court's ruling that they failed to state a cause of action upon which relief can be granted, the questions presented by this appeal as to Appellees herein are identical to those presented as to Appellees Guam Savings and Loan and Marianas Finance, to-wit:



1. Can the affirmative defense of res judicata be raised by a motion to dismiss under the Federal Rules of Civil Procedure?

2. Were all of the issues raised in Appellants' complaint finally settled and adjudicated in Civil Case No. 49-55, the judgment of which was pleaded by Appellees as a bar to this action?

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### ARGUMENT.

#### I.

**UNDER THE FEDERAL RULES OF CIVIL PROCEDURE, THE AFFIRMATIVE DEFENSE OF RES JUDICATA MAY BE RAISED BY MOTION WHERE ALL OF THE RELEVANT FACTS ARE, AS HERE, SHOWN BY THE COURT'S OWN RECORDS, OF WHICH IT TAKES JUDICIAL NOTICE.**

If there is no genuine issue as to a material fact so far as the affirmative defense of res judicata is concerned, it may be raised by motion and the Court may properly pass upon the legal sufficiency of the defense. *346 Bloomfield Avenue Corp. v. Montclair Manufacturing Co.*, D.C. N.J. 1950, 90 F. Supp. 1020.

The District Court had before it all of the records relating to the prior action here relied upon as a bar to the present action. Where all of the relevant facts are thus shown by the Court's own records, it will take judicial notice of them, and in such case there is no reason for first requiring an affirmative pleading. Nothing further could be developed by a trial of the issue. *W. E. Hedger Transp. Corp. v. Ira S. Bushey & Sons*, 186 F. 2d 236 (2nd Cir. 1950); *Florasynth Laboratories Inc. v. Goldberg*, 191 F. 2d 877 (7th

Cir. 1951); *Larter & Sons v. Dinkler Hotels Co.*, 191 F. 2d 877 (5th Cir. 1952).

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## II.

**THE ISSUES RAISED IN THIS ACTION WERE FINALLY SETTLED AND ADJUDICATED IN CIVIL CASE 49-55 AND JUDGMENT RENDERED THEREIN IS RES JUDICATA.**

With the exception of the individual Appellees named in their capacity as officers and stockholders of Central Building, all of the parties to this action are the same as those in Civil Case 49-55, District Court of Guam. The identification in interest of these individuals with Central Building is such as to make them privies to the prior action. 50 C.J.S. 331.

The rights of the parties, the facts upon which the rights were predicated, the matter in issue, namely Appellee Savings and Loan's Title, all of these were directly adjudicated upon and necessarily involved in the prior action. Although Appellants defaulted, the jurisdiction of the District Court is conceded and the judgment nevertheless bars a subsequent suit on the same subject matter. 34 C.J.S. 743, 50 C.J.S. 57.

The basis upon which Appellants seek to avoid the doctrine of res judicata is their assertion of superior title. Since priority was actually determined in the prior action, this rule is not applicable. *Dobbins v. Economic Gas Co.* (1920), 182 Cal. 616, 189 Pac. 1073.

Appellees respectfully refer the Court to the brief of Appellants Guam Savings and Loan and Marianas



Finance, pp. 17 et seq. for authority and reasoning as to this conclusion.

Appellants assert no other reason for the non-applicability of res judicata as to Appellees herein.

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**CONCLUSION.**

For the foregoing reasons, it is submitted that the judgment of the District Court should be affirmed.

Dated, June 23, 1959.

Respectfully submitted,

JOHN A. BOHN,

ARRIOLA, BOHN & GAYLE,

By CHARLES J. WILLIAMS,

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Anthony C. Lujan, Elizabeth S. Lujan, John  
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